

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Edwards Sowers on 03/08/2010.

- Claims **7-9, 13-14** and **26-32**, which are currently withdrawn, are rejoined for examination on the merits for patentability as they are directed to the non-elected species and process invention of an allowable product claim. Accordingly, claims **1-32** of the instant application are allowed.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Instant claims **1-25** are drawn to a fungicidal composition consisting essentially of: (i) a fungicidally effective amount of a fatty acid, or a salt thereof, having 5 to 22 carbon atoms; (ii) an organic carboxylic acid, or a salt thereof, different from the fatty acid, wherein the organic carboxylic acid is selected from the group consisting of the acids, as recited therein; (iii) a carrier and (iv) at least one emulsifier; wherein the fungicidally composition exhibits a synergistic fungicidal effect upon application.

Instant claims **26-32** are directed to methods of controlling fungus and treating a crop product to inhibit fungal infection by applying the composition, as set forth above, to the crop product.

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The instant invention is unobvious over the prior art in that the claims have been amended using transitional phrase "consisting essentially of", which limits the scope of the instant claims to specified materials and those that do not materially affect the basic and novel characteristics of the claimed invention (see Remarks: page 9 and Claims filed on 03/09/2010).

In addition, instant claim 1 has been amended by specifying the novel characteristic of the claimed composition, in which when a fatty acid having 5 to 22 carbon atoms and an organic carboxylic acid, as claimed, are used in combination, it exhibits synergistic fungicidal effect. For example, when 0.014 % (by weight) of caprylic acid (a C₈-fatty acid) is used alone, it inhibited the growth of white mold in **34 %** and when 0.01 % (by weight) of glycolic acid (an organic carboxylic acid) is used alone, it did not inhibit the growth of white mold (**0 %** inhibition). However, when 0.014 % of caprylic acid and 0.01 % of glycolic acid are used in combination, it inhibited the growth of white mold in **71 %** (see Claims filed on 01/12/2010 and 03/09/2010; also see Specification: page 21, Table 13). The results demonstrate that when the claimed fatty acid and organic carboxylic acid combined, it exhibits an unexpected synergistic fungicidal activity that is not taught or suggested by the prior art, namely Tate, D.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Contact Information

Any inquiry concerning this communication from the Examiner should direct to Helen Mei-Ping Chui whose telephone number is 571-272-9078. The examiner can normally be reached on Monday-Thursday (7:30 am – 5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either PRIVATE PAIR or PUBLIC PAIR. Status information for unpublished applications is available through PRIVATE PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the PRIVATE PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/H. C./

Examiner, Art Unit 1616

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616

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